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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BINDU RAMA RAO

Appeal 2009-011663
Application 10/782,083
Technology Center 2400

Before LANCE LEONARD BARRY, HOWARD B. BLANKENSHIP, and
JOHN A. JEFFERY, *Administrative Patent Judges*.

JEFFERY, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1-21 and 23-44. We have jurisdiction under 35 U.S.C. § 6(b). We reverse.

STATEMENT OF THE CASE

Appellant's invention manages incoming access requests from multiple electronic devices during hardware or firmware updates. *See*

generally Spec. ¶¶ 0010, 0053. Claim 1 is illustrative with key disputed limitations emphasized:

1. A method of gracefully managing incoming access requests *during an update event* from a plurality of electronic devices in a communication network, each of the incoming access requests comprising at least one *update-related parameter*, the method comprising:

receiving each incoming access request at least temporarily;

monitoring and evaluating the incoming access requests using the at least one update-related parameter;

determining the availability of at least one device server to process the incoming access requests, based upon the at least one update-related parameter;

immediately processing incoming access requests upon determining that the at least one device server is available; and

communicating at least one message to electronic devices requesting access upon determining that the at least one device server is unavailable.

The Examiner relies on the following as evidence of unpatentability:

| | | |
|--------|-----------------|--|
| Boivie | US 6,842,783 B1 | Jan. 11, 2005 (filed Feb. 18, 2000) |
| Peart | US 6,952,714 B2 | Oct. 4, 2005 (filed Oct. 2, 2001) |
| Vogl | US 6,959,327 B1 | Oct. 25, 2005 (filed Aug. 29, 2000) |

THE REJECTIONS

1. The Examiner rejected claims 1, 3-6, 8-11, 19-21, 23-31, 35, 36, 38, and 40-43 under 35 U.S.C. § 103(a) as unpatentable over Boivie and Peart. Ans. 4-13.¹
2. The Examiner rejected claims 13-18 under 35 U.S.C. § 103(a) as unpatentable over Boivie and Vogl. Ans. 14-16.
3. The Examiner rejected claims 2, 7, 12, 32-34,² 37, 39, and 44 under 35 U.S.C. § 103(a) as unpatentable over Boivie, Peart, and Vogl. Ans. 16-20.

THE OBVIOUSNESS REJECTION OVER BOIVIE AND PEART

Regarding independent claim 1, the Examiner finds that Boivie discloses a method of managing incoming access requests during an update event from plural electronic devices in a network with every recited feature except for (1) monitoring and evaluating the incoming access requests using at least one update-related parameter, and (2) determining the availability of at least one device server to process the requests based on the parameter, but cites Peart as teaching these features in concluding that the claim would have been obvious. Ans. 4-5, 21-26.

¹ Throughout this opinion, we refer to (1) the Appeal Brief filed December 9, 2008; (2) the Examiner's Answer mailed February 25, 2009; and (3) the Reply Brief filed April 27, 2009.

² Although the Examiner indicates that claims 32-43 were rejected in the statement of the rejection, the body of the rejection indicates that the Examiner intended to reject claims 32-34 due to an apparent typographical error (i.e., transposing the "3" and "4" changing "34" to "43"). *See* Ans. 16-20. We therefore present the correct claim listing here for clarity.

Appellant argues that the cited prior art does not teach or suggest managing incoming access requests during an update event including monitoring and evaluating those requests using at least one update-related parameter as claimed. According to Appellant, not only does the cited prior art not teach or suggest an update event, let alone a parameter related to this event, but Peart's execution request is sent from the server to the client which is a direction opposite from that claimed. App. Br. 7-9; Reply Br. 2-3. Appellants add that the Examiner improperly combined the cited references since, among other things, (1) the stated motivation to combine the references is inapplicable given the direction of traffic in Peart noted above, and (2) the references are non-analogous. App. Br. 10-15; Reply Br. 3. The issues before us, then, are as follows:

ISSUES

Under § 103, has the Examiner erred in rejecting claim 1 by finding that Boivie and Peart collectively would have taught or suggested managing incoming access requests during an update event from plural electronic devices in a network, each incoming access request comprising at least one update-related parameter, where the incoming access requests are monitored and evaluated using that parameter?

FINDINGS OF FACT (FF)

1. Appellant notes that new versions (updates) of firmware and software for electronic devices (i.e., mobile electronic devices) are periodically made available to fix bugs, introduce and delete features, etc. Spec. ¶ 0007.

2. According to Appellant's Specification:

An update may comprise firmware or software updates that modify or change the version of a particular firmware or software installed in the device, for example, upgrading to a newer version, repairing a bug in the software, etc. An update may also add new services to the electronic device or delete services, as desired by a service provider, device manufacturer, or an end-user.

Spec. ¶ 0053.

3. Boivie's system enforces communications-bandwidth-based service level agreements (SLAs) to customers hosted on a clustered web server. To this end, requests from clients 130 arrive at a Communications Bandwidth Manager (CBM) 110 via input link 241 and are queued in queuing system 360. Based in part on data monitored from outgoing data path 160 via the CBM's traffic estimator 340, the CBM's scheduler 350 (1) selects a request in the queuing system; (2) determines the server node to service the request; and (3) sends the selected request to the server node via link 280. Boivie, Title; Abstract; col. 1, ll. 10-14; col. 5, l. 14 – col. 7, l. 17; Figs. 1-3.

4. Peart's system automatically executes a program associated with a data file when the data file and executable program are located on different computing nodes (e.g., client and server). Peart, Abstract; col. 1, ll. 7-13.

5. Peart's web-based file-type association (FTA) embodiment enables transparent program execution on a server node by selecting graphical indicia presented on a client node that represent data files located on a web server. As shown in Figure 10A, after the client node receives a selection of a graphically-depicted data file, the client node provides this selection to the web server (steps 280-288). The client node then receives a request to

execute a first executable program (i.e., an execution request) (step 292), where the request includes parameters that (1) refer to the first and second executable programs, and (2) identify the selected data file on the web server. The client then executes the first program, and sends a request to execute the second program to the server (steps 296-300). Peart, col. 29, l. 5 – col. 30, l. 5; col. 30, ll. 37-47; Fig. 10A.

6. In one embodiment, the parameter identifying the selected data file is provided directly to the server node. Peart, col. 30, ll. 30-35.

7. In one embodiment, the web server uses mappings which specify an association between a selected data file and executable programs. These mappings are received in groups or aggregated with other data such as software updates. The mappings can be updated either periodically or as needed. Peart, col. 31, ll. 45-67.

8. Using received mapping information, the web server constructs and transmits an execution request to the client node, which the client node later executes. Peart, col. 32, ll. 1-4; Fig. 10B (step 324).

9. Peart notes in connection with the client-based FTA embodiment that mappings and rules can be distributed over a live telecommunications link and in real-time while the client and server nodes are used. Peart, col. 23, ll. 18-28.

ANALYSIS

Based on the record before us, we find error in the Examiner's obviousness rejection of independent claim 1 which calls for, in pertinent part, managing incoming access requests *during an update event* from plural electronic devices in a network, each incoming access request comprising at

least one update-related parameter, where the incoming access requests are monitored and evaluated using that parameter. We emphasize the term “during an update event” here, for we find the Examiner’s reliance on Boivie for teaching managing incoming access requests during an update event (Ans. 4) problematic.

In the Specification, Appellant describes updating in terms of providing new versions of firmware or software, or adding or deleting device services. FF 1-2. Although these types of updates are indicated in permissive terms (FF 2), they nonetheless inform our construction of the term “update event” which, when considered in light of the disclosure, means an event associated with (1) providing new versions of electronic device firmware or software, or (2) adding or deleting device services.

Boivie, however, simply does not disclose an “update event” when construed in this context, let alone manage incoming access requests during such an event as claimed. Rather, Boivie enforces bandwidth-based SLAs by (1) queuing incoming requests, and (2) selecting particular queued requests and sending them to selected server nodes based on monitoring outgoing data. FF 3. Boivie simply has nothing to do with updating. To the extent that the Examiner construes Boivie’s client-server data exchange or automatically selecting a particular request and corresponding server node as somehow constituting an “update” is problematic, for neither interpretation reasonably comports with an “update event” when construed in light of the specification as noted above.

Nor does the Examiner’s reliance on Peart cure this deficiency. That said, the Examiner is correct that Peart sends a parameter identifying a selected data file directly to the server node (Ans. 21; FF 6) which teaches

sending parameters from client to server. Appellant's arguments regarding Peart's sending execution requests from the server to the client which is a direction opposite from that claimed (App. Br. 7-9; Reply Br. 2-3)—while correct (*see* FF 4)—simply do not address Peart's alternative embodiment indicated by the Examiner noted above.

Moreover, the Examiner's reliance on Peart's mapping information (Ans. 22) has some merit, for Peart's server uses mappings to construct and transmit execution requests. FF 7-8. Not only can these mappings be included in software updates, but the mappings themselves can also be updated. FF 7. In this regard, the Examiner's point (Ans. 22) that associated parameters would at least be *related* to these updates is well taken, for that is all the claim requires by reciting, somewhat broadly, an *update-related* parameter.

But despite these update-related parameters in Peart, we still fail to see how incoming access requests containing these parameters would be managed *during an update event* as claimed—a crucial temporal requirement. Peart does, however, indicate in connection with a different embodiment that mappings can be distributed in real time and while the client and server nodes are used. FF 9. And as noted above, mappings are associated with update events. *See* FF 7. But we cannot say that this teaches or suggests managing incoming access requests *during an update event* as claimed, for the server receives mappings (and their associated updates) *before* receiving and processing requests from the client. *See* FF 5-8.³

³ *Accord* Peart, Fig. 9B (illustrating a server-side FTA embodiment where the mapping is received at the server before receiving stored data file selection from client).

Therefore, even if the references were combinable as the Examiner asserts, they still do not teach or suggest managing incoming access requests *during an update event* from plural electronic devices in a network, each incoming access request comprising at least one update-related⁴ parameter, where the incoming access requests are monitored and evaluated using that parameter. Since this deficiency is dispositive of the issue before us, we need not address Appellant's arguments regarding the references' combinability. App. Br. 10-15; Reply Br. 3.

We are therefore persuaded that the Examiner erred in rejecting (1) independent claim 1; (2) independent claims 19 and 42 which recite commensurate limitations; and (3) dependent claims 3-6, 8-11, 20, 21, 23-31, 35, 36, 38, 40, 41, and 43 for similar reasons.

THE OTHER OBVIOUSNESS REJECTIONS

Since the Examiner has not shown that Vogl cures Boivie's deficiencies regarding managing incoming access requests during an update event noted previously, we likewise reverse the Examiner's rejection of (1) claims 13-18 over Boivie and Vogl (Ans. 14-16), and (2) claims 2, 7, 12, 32-34, 37, 39, and 44 over Boivie, Peart, and Vogl (Ans. 16-20) for similar reasons.

⁴ Although independent claim 42 recites a selection-related parameter instead of an update-related parameter, our reversal nonetheless applies to claim 42 as well.

CONCLUSION

The Examiner erred in rejecting claims 1-21 and 23-44 under § 103.

ORDER

The Examiner's decision rejecting claims 1-21 and 23-44 is reversed.

REVERSED